



A TOOLKIT

Fostering the Sustainability of Mining Operations Through Improved Land Governance Frameworks



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1. Background information

The following Toolkit is grounded in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, in the Context of National Food Security (VGGTs) (2012). The Toolkit's primary objective is to illustrate how to streamline the principles articulated in the VGGTs into contexts where mining operations and land governance frameworks overlap, in order to promote socially and environmentally sustainable land ownership and use.

As such, the Toolkit stresses the importance of advancing transparent and robust policy frameworks for land tenure and strengthening the capacities of public agencies, the private sector, civil society organizations and communities who are concerned with land governance. These actions will, in turn, improve the sustainability of mining operations, reducing tensions between communities and companies through more equitable and regulated use of land resources.

The following table provides a brief illustration of sustainable land governance themes relevant for this Toolkit and how they are addressed in the provisions of the Guidelines.

TABLE I: Selected land governance themes in the VGGTs

Section	Theme	VGGT Provisions
4.4 5.3 5.5	Legal framework	Legal provisions on land ownership and use should be non-discriminatory and gender-sensitive . They should be developed using participatory processes and reflect the social, cultural, economic and environmental significance of land .
4.4	Rights recognition	States should provide recognition to legitimate tenure rights, including those currently not protected by the law , and publicize the rules regarding the definition of legitimacy.
6.5	Access to Information	States should share spatial, and other, information about land tenure and make it easily accessible for different stakeholder groups .
8.2	Public lands	Where States own or control land, the legitimate tenure rights of individuals and communities, including where applicable those with customary tenure systems , should be recognized, respected and protected .
11.2	Transactions in land	States should take measures to prevent undesirable impacts on local communities , indigenous peoples and vulnerable groups that may arise from, inter alia, land speculation, land concentration and abuse of customary forms of tenure . States and other parties should recognize that values, such as social, cultural and environmental values, are not always well served by unregulated markets.
17.1 17.2 17.3	Records systems	States should provide systems to record individual and collective tenure rights in order to improve tenure security. Information contained in these records should be easily accessible . Particular care should be taken to avoid recording conflicting land rights where customary or informal tenure systems are in place.
21.1	Resolution of tenure disputes	States should provide access through impartial and competent judicial and administrative bodies to timely, affordable and effective means of resolving disputes over tenure rights, including alternative means of resolving such disputes, and should provide effective remedies and a right to appeal .

The Toolkit aims to illustrate how to integrate the land governance considerations outlined above into project design and implementation. It draws from the experience of the Diagnostic on Land Governance in the Context of Mining in Apurimac, Peru, carried out in 2015 with funding provided by the Extractives for Development (E4D) Trust Fund. The Diagnostic was initiated in response to the Government of Peru's request for programmatic assistance from the World Bank in increasing the environmental and social sustainability of mining operations.



The Diagnostic was implemented in the department of Apurimac, a nascent yet rapidly developing mining region where concessions currently cover about 65 percent of the entire area. In one of the provinces of the department—Cotabambas—concessions account for as much as 98 percent of the surface territory. At the same time, the majority of the population is rural and dependent on agriculture, with poverty levels significantly above the country average at 78 percent. Most agricultural land is owned communally by peasant communities (*comunidades campesinas*) and therefore covered by special land governance provisions. The region also has a legacy of protracted social conflict.

Overall, in recent years the extractive sector has contributed significantly to Peru's continuing period of economic growth, which averaged approximately six percent between 2005 and 2014. The fast-paced development of the sector has spurred both private investment, as well as positively influenced the fiscal balance, propelling Peru into the category of upper middle-income countries. However, benefits at the country level do not always materialize locally. In the context of extreme poverty and sometimes nebulous land governance frameworks, the advent of mining operations can re-ignite existing rifts in the community or spark up new ones, negatively impacting the prospects of both businesses and communities. In Apurimac, with the local government facing substantial capacity constraints and the land demarcation process incomplete, conflicts occurred between municipalities over mining-related revenue transfers. Additionally, tensions arose between the overlapping land and resource ownership frameworks, with communities laying claims to the former and companies to the latter.



2. Toolkit objectives

The objective of the Toolkit is to illustrate the ways in which the Diagnostic addressed the above mentioned challenges consisting of reconciling land governance considerations with the development of the mining sector. Through this, the Toolkit aims to serve as guidance and a point of reference for staff who work on the interplay of inclusive land governance and the sustainability of projects from the mining sector.

3. Streamlining land governance considerations into mining operations—analysis and tools

While the process of streamlining land governance considerations into mining operations is broken down below into a series of sequential steps, it is done so primarily for reasons of logical convenience. In actuality, these processes overlap and feed into each other and may need to be periodically revisited. For instance, if a project is faced with a growing number of community grievances this may indicate the need to revise the consultation and participation framework.

a. Issue mapping and context analysis

When trying to identify problems for land access and use that may be caused or intensified by the arrival of mining operations, it is important to understand the different perspectives and definitions of land held by different stakeholder groups. While there is a tendency for companies to view land as a tradeable asset, from the perspective of communities land is “(...) the source for food and shelter; the basis for social, cultural and religious practices; and a central factor in economic growth.”¹ From this comprehensive understanding of different dimensions of land resources, it will be easier to identify and anticipate governance issues that will come into prominence when mining operations begin. These usually fall into two broad categories.

Land governance challenges independent of mining operations:

- → unresolved land disputes
- → unclear and/or contradictory legal provisions related to land
- → cumbersome land registration procedures
- → uncertainty over customary land rights
- → lack of institutional framework for price negotiation and allocation

Land-related issues arising from the development of mining operations:

- → resettlement
- → livelihoods impacts related to natural resource management
- → influx of temporary migrant workers
- → fraudulent land claims

While the former exist independently of the presence of extractive companies, it is important to recognize these problems as well, as the development of mining operations provides an opportunity for developing holistic solutions to the entire spectrum of land challenges within a given area.

Existing local resources and records should be used to identify these issues. Analysis of the local context should rely on, but not be limited to, those existing resources. Credible and comprehensive land data might be difficult to obtain; it might



be dispersed and different sources might contain conflicting information. In the case of Peru, for instance, three different entities were responsible for collecting data on rural communities.

Triangulating information among sources helps to ensure accuracy and completeness, but may also reveal inconsistencies.

In these cases, third-party assistance may be required in order to provide a comprehensive mapping of the issues: from collecting information from existing sources, through checking for their accuracy, filling in existing gaps, to creating a system where it can be easily accessed.

b. Stakeholder identification and analysis

As important as it is to define issues related to land governance and mining, it is equally important to develop an understanding of the stakeholders relevant for the land governance-mining nexus, the interests they represent and their respective capacities to engage.

¹ FAO (2012). Voluntary Guidelines on the Responsible Governance of Tenure, p. iv.



The process should start as early as possible to allow ample time for subsequent engagement and possible inclusion in decision-making processes.

Because mining operations usually have a substantial footprint, they are likely to generate big expectations even before a project begins, so addressing them early on helps to ensure a sustainable working relationship between communities, companies and the public sector. If left unaddressed, community concerns are likely to lead to disputes and delays, eventually eroding trust.

The process of identification may be prolonged due to lack of clarity and consistency between sources in terms of information on local communities, especially in contexts with heterogeneous stakeholder groups and poor systems for information recording.

With obstacles like this, it may be especially hard to identify vulnerable or marginalized groups, which further reinforces the arguments for triangulating information between various sources and beginning the process early. While there is a tendency of engaging with the strongest voices in the community—broad support is needed for ensuring the sustainability of both land governance frameworks and mining operations.



As different stakeholders may become relevant at different project stages as the mining operation develops, it is critical to bear in mind that stakeholder identification is a continuous and dynamic process, which needs to be systematically revisited. The International Council on Mining and Metals (ICMM) recommends updates on an annual basis as a minimum, or more often in instances where the design, scope or environmental and social impact of a project changes substantially².

Analysis entails a profound understanding of underlying interests, motivations and perspectives of different stakeholder groups—in the current context, underscoring the different approaches to land as a commodity or tradeable asset on the



one hand, and as a source of livelihoods and cultural identity on the other, is key to developing a working and sustainable compromise.

As a final point, it is important to understand the granularity in the stakeholder base and avoid making the assumption that all members of a group or community share the same opinions and are driven by the same motivations and interests. The Diagnostic in Peru revealed a great deal of diversity between the many different local communities. Differing organizational cultures and views of a project can have powerful implications for subsequent engagement.

c. Consultation and participation framework

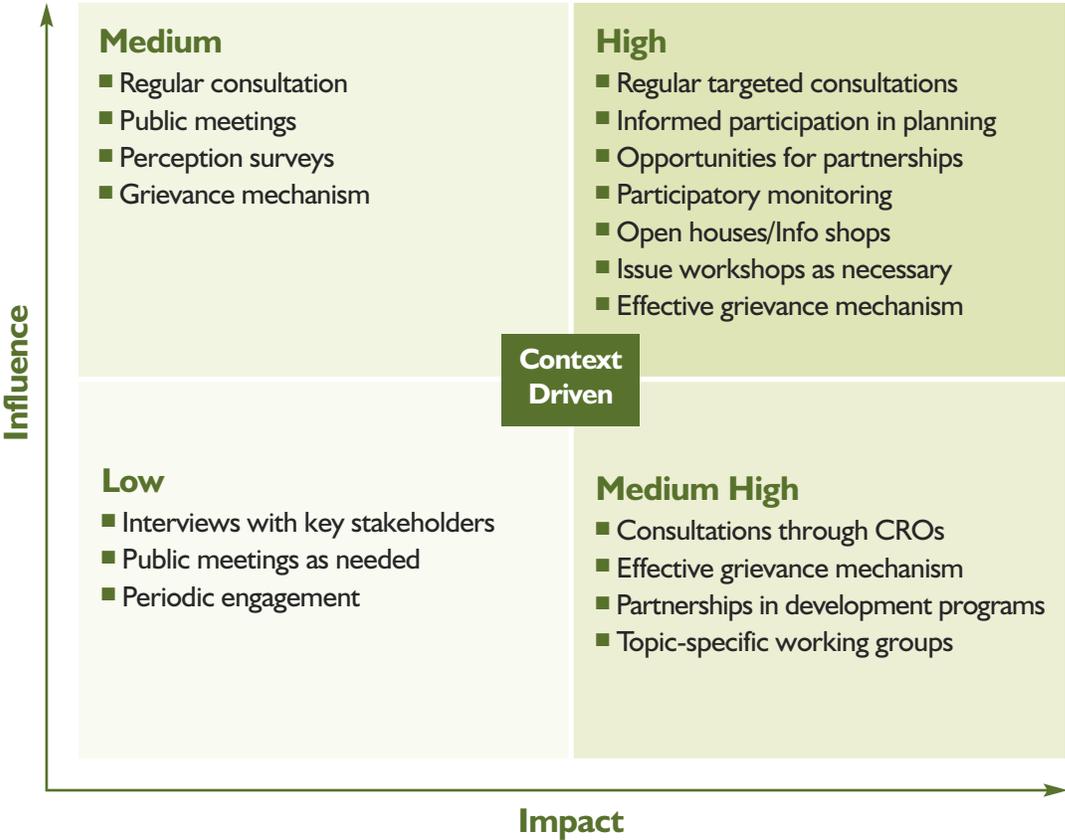
An adequate identification and analysis framework should yield an engagement plan for involving communities in the process of establishing a sustainable land governance framework, recognizing their organizational structures, as well as abilities and constraints to engage.

² ICMM (2012). Community Development Toolkit, p. 58

It is equally important to take into consideration highly impacted and influential stakeholders, as well as those who are impacted to a considerable extent but who lack capacities to engage in consultation and participation on an equal footing with all other parties.

The following matrix helps to tailor the type of engagement to the degree of impact that a project has on a particular stakeholder group and the leverage that they in turn have over its outcomes.

TABLE 2: Consultation matrix³



Where capacity is lacking, efforts need to be made to rectify the information asymmetries between different groups—within the context of mining there is likely to be a divergence of capacity levels not just between companies and communities, but also between local and national-level government and companies.

It should also be noted that activities around land governance and mining might be occurring on different levels—while concessions are granted at the level of central government, community rights and relations are typically within the realm of local governments, as was the case in Apurimac. With this in mind, efforts need to be invested into creating a shared forum with a robust system for exchange of information on issues such as land prices and valuation, registration procedures, and environmental and social impacts of mining operations, etc. Given adequate capacities, government entities can play a facilitating role in this process.

Where mining operations have a significant impact on livelihoods and the management of natural resources, including land, participatory processes regarding defining and monitoring these impacts should be implemented.

3 ICMM, 2012. Community Development Toolkit, p. 60

d. Implementation, monitoring and evaluation

A complete framework of topics and stakeholders relevant for contexts where mining operations have implications for existing land tenure systems, allows for developing solutions that will promote sustainable land use. Below is a thematic overview of issues that will inform successful implementation of improved governance frameworks. The list is not exhaustive, but is a good starting point.

Capacity Building

Ensuring adequate capacities of all parties involved in the creation and management of land governance frameworks defines their success to a considerable extent. In Peru, the government's capacities—particularly at the local level—were quite limited. A technical assistance program was implemented to strengthen the capacity of the Ministry of Agriculture and regional governments for rural land registration. Recommendations were made to conclude agreements made with government agencies that have a presence in rural areas (i.e. Banco de la Nación, municipal offices) to provide land administration services to the surrounding communities. Efforts were invested into promoting more cooperation and exchange of information between the agencies responsible for granting concessions and those engaged in regulating land ownership and use.

Administrative Framework

Strengthening capacities creates a foundation for building a more streamlined and accessible administrative framework for land registration, land access and use, and transactions in land. In Peru, requirements for registration of rural community representatives were simplified allowing more of the communally owned land to be properly registered. Procedures were developed for regular updates to existing registry information. Finally, the idea of one-stop-shops in main townships and mobile registry offices was developed, which allowed for easier access to land services, particularly for communities in remote locations.

Dispute Resolution and Grievance Redress

While it is important to design administrative procedures for dispute resolution through the judiciary, attempts should be made at solving land-related conflicts on the ground first, for instance through the company dispute resolution mechanism. This will likely improve the efficiency of the process. Employing locals as liaisons between the company and the broader community can help increase trust in company-originated grievance redress systems. The government, by virtue of interacting on a regular basis with both communities and companies, can play an important role in facilitating the process of dispute resolution. The Diagnostic recommended that an administrative process for boundary dispute resolution can be developed, including guidelines for dialogue and negotiation for both peasant communities and mining companies.



Integrated Systems for Access to Land Information

Reliable and accessible information on land is critical for good governance. In Peru, information gaps and discrepancies provided a significant obstacle to the recognition of legitimate community rights to land and stalled mining operations, as concession owners were not able to identify and contact land owners. The Diagnostic provided concrete recommendation for implementing a system for gathering and exchanging up-to-date information on land, as well as the impacts of mining operations (see sidebar).



In Apurimac, existing resources were used as a starting point to create an information system on land and mining. The available cadaster information was matched with geospatial information which helped to clarify exact ranges and boundaries. This was of importance, as 60% of already granted communal land rights titles did not correspond to a clearly demarcated area, creating difficulties for communities and companies alike. Recommendations were given for creating a Land Price Observatory to provide trustworthy and accurate information on land prices and comprehensive valuation methods. The diagnostic also underscored the role of regional and local governments in the provision of information and advisory services to peasant communities about impacts of the concessions and mining activities on their livelihoods. Finally, given a history of low engagement and participation of women in rural environments in Peru, information campaigns were devised in order to encourage greater representation of women in communal decision-making processes regarding land ownership and use.

e. Lessons learned

- Conflicting tenure frameworks and poor tenure governance are likely to lead to social instability and conflict, unsustainable resource use, and to hurt growth more generally.
- Formalization and streamlining of land administration procedures and pricing systems in a transparent and accessible way, alongside recognition of community rights increases the sustainability of mining operations.
- Access to reliable land information may correct for information asymmetries and facilitates legitimate transactions. Systems for land information may need to be enhanced, linked, consolidated or created from scratch.
- Capacity building for agencies responsible for land tenure regularization is the building block for more streamlined and accessible administrative frameworks. Capacity building for communities is equally important, if not more complex, and informs their successful and informed participation in decision-making processes related to a project.

The toolkit was prepared by a World Bank team with support from the Government of Japan through the Policy and Human Resources Development Technical Assistance Program (PHRD), as part of a broader initiative to disseminate the Voluntary Guidelines

